Supreme Court, U.S.
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No. 03-1524

IN THE

Supreme Court of the United States

CLARENCE BRENT HAEBERLE,

Petitioner,

v.

UNIVERSITY OF LOUISVILLE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court properly grant and the Sixth Circuit properly affirm judgment on the pleadings in favor of the Respondents on the grounds that the statute of limitations barred a university professor's constitutional claims based on his failure to receive tenure, when he filed suit more than one year after receiving notice that he would not receive tenure?

2. Did the District Court properly dismiss and did the Sixth Circuit properly affirm dismissal pursuant to appropriate standards under the Federal Rule of Civil Procedure 12(c) where the Complaints contained self-defeating facts?

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INTRODUCTION

Dr. Clarence Brent Haeberle's ("Dr. Haeberle") Petition for Writ of Certiorari should be denied because he fails to raise questions of importance. The decision below turns upon its own facts and will affect few others besides the parties involved. The asserted errors consist of alleged erroneous factual findings or alleged misapplication of the properly stated rule of law, and thus, are not appropriate for review. Sup. Ct. R. 10. Nevertheless, Courts below properly applied the law to the pleadings in determining that the Respondents were entitled to judgment on the pleadings on each of Petitioner's constitutional causes of action.

STATEMENT OF THE CASE

In his Petition, Dr. Haeberle mischaracterizes his pleadings. He makes allegations not contained in the pleadings and not considered below.

I. *Dr. Haeberle's Allegations Contained in his Pleadings.*

A. Tenure Criteria.

Dr. Haeberle is a former Assistant Professor of Dentistry at the University of Louisville School of Dentistry. In his Complaint, Dr. Haeberle alleged that Respondents did not apply properly the criteria set forth in the University Redbook, which contains the University's governing guidelines. Specifically, Dr. Haeberle alleges that Respondents did not follow the addendum to the Redbook titled "Criteria Used to Determine Levels of Faculty Performance," which Dr. Haeberle made part of his pleadings. The document sets forth several areas of evaluation, but

explains that those areas are not exclusive. The document states, "It should be emphasized that this outline is not a complete listing and that the categorization is not rigid."

B. Consideration of Dr. Haeberle for Tenure.

In August 1998, Dr. Haeberle submitted his information to the Faculty Personnel Review Committee in order to be considered for promotion to Associate Professor with Tenure. On September 24, 1998, the Faculty Personnel Review Committee of the School of Dentistry voted to endorse Dr. Haeberle's promotion to the rank of Associate Professor with an award of tenure. Dr. Rowland A. Hutchinson, former Dean of the University of Louisville School of Dentistry, supported the Personnel Review Committee's decision. Dr. Hutchinson recommended to Respondent Dr. Joel Kaplan that Dr. Haeberle be promoted with tenure.

Dr. Kaplan found that Dr. Haeberle's research and publications were inadequate for promotion. Dr. Kaplan recommended that Dr. Haeberle be denied both promotion and tenure. Dr. Kaplan forwarded his recommendation to Respondent Provost Carol Garrison. As Provost, Garrison made tenure recommendations to the Board of Trustees in consultation with the President. Like Dr. Kaplan, Provost Garrison also recommended against granting promotion and tenure to Dr. Haeberle. Provost Garrison communicated her recommendation to Respondent John Shumaker, then President of the University. Upon recommendation by Provost Garrison and President Shumaker, the Board did not approve promotion and tenure for Dr. Haeberle.

Dr. Haeberle received notice that he was not reappointed and was to be terminated effective March 31, 2000. He then

filed a grievance concerning his denial of tenure with the University Faculty Grievance Committee, which conducted a full hearing. Although Dr. Haeberle's Complaint does not state the exact date that he was notified of his impending termination, he does indicate that he received notice prior to his September 7, 1999, grievance hearing. The University Faculty Grievance Committee recommended that "the determination of the Board be reversed and Dr. Haeberle granted tenure." Upon reconsideration, Respondents did not alter their decisions.

II. *Procedural History Below.*

Dr. Haeberle filed this lawsuit on December 21, 2000, against the University, President Shumaker, Provost Garrison, Dr. Kaplan and each member of the Board of Trustees. In his original Complaint, pursuant to 42 U.S.C. § 1983, he alleged that Respondents violated his due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and § 2 of the Kentucky Constitution. He also alleged that Respondents violated 42 U.S.C. § 1985(3).

Respondents removed the case to the United States District Court for the Western District of Kentucky. Respondents filed a Motion for Judgment on the Pleadings, which the District Court granted. The District Court dismissed Dr. Haeberle's claims under 42 U.S.C. § 1983 for monetary damages against the University and its officers in their official capacity. The Court went on to find that the facts alleged by Dr. Haeberle did not state a claim for a violation of his due process rights under the Fourteenth Amendment. The Court held that Dr. Haeberle, a non-tenured professor, had no constitutional property right to tenure and continued employment. The Court also dismissed

Dr. Haeberle's claim based on § 2 of the Kentucky Constitution because it was identical to his federal due process claim. Furthermore, the Court found that sovereign immunity bars his claim. Finally, the Court found that Dr. Haeberle failed to state a claim for violation of 42 U.S.C. § 1985(3) because he failed to allege class-based discriminatory animus.

In response, Dr. Haeberle amended his Complaint for the second time, listing six new causes of action arising from the facts alleged in the original complaint: violation of the right of free association under the First Amendment to the U.S. Constitution and Section 2 of the Kentucky Constitution; denial of equal protection under the United States and Kentucky Constitutions; breach of contract by the University and the Trustees; and tortious interference with contractual relations by Respondents Shumaker, Garrison, and Kaplan.

Respondents again moved for judgment on the Pleadings. The District Court again granted the motion, finding that the one-year statute of limitations barred the constitutional claims. The Court declined to exercise jurisdiction over the remaining state law claims of tortious interference and breach of contract and remanded them. On appeal, the Sixth Circuit affirmed the dismissal of all of the constitutional claims on the basis of the statute of limitations.

REASONS FOR DENYING THE PETITION

I. *The Questions Are Not Important.*

The Petition for Writ of Certiorari should be denied because the questions raised are not important. The decision below turns upon its own facts. There is no dispute as to the relevant law or standards applied to Dr. Haeberle's claims. The questions of alleged importance involve whether Dr. Haeberle has sufficiently pleaded constitutional violations and whether he filed suit within one year of the violation. There is no conflict among the circuits regarding the appropriate statute of limitations for constitutional claims or the standard for a motion for judgment on the pleadings. The courts below analyzed the issues in accordance with well-established federal law. These questions will affect few others than the litigants, and are not appropriate for granting certiorari. At best, the asserted errors consist of alleged erroneous factual findings or alleged misapplication of the properly stated rule of law, and thus, are not appropriate for review.

The Supreme Court has denied at least one petition for writ of certiorari in another case involving similar legal and factual issues. *See Lever v. Northwestern University*, 979 F.2d 552 (7th Cir. 1992), *cert. denied*, 508 U.S. 951 (1993). Nothing here warrants further review of Dr. Haeberle's claims. He has presented no important questions for the Court to consider. Therefore, the Petition should be denied.

II. *The Decisions Below Were Reasonable and Appropriate.*

A. The Statute of Limitations Bars Dr. Haeberle's Claims.

The Sixth Circuit's decision in *Haeberle v. University of Louisville, et al.* is completely consistent with the Supreme Court's decision in *Delaware State College v. Ricks*, 449 U.S. 250, 259 (1980). The statute of limitations bars Dr. Haeberle's constitutional claims. Dr. Haeberle does not dispute that the applicable statute of limitations for 42 U.S.C. § 1983 actions brought in Kentucky is one year. *See Collard v. Kentucky Bd. of Nursing*, 896 F.2d 179, 182 (6th Cir. 1990). The issue decided by the Sixth Circuit and raised in Dr. Haeberle's Petition is the date that the statute of limitations began to run.

Contrary to Dr. Haeberle's arguments, federal law, not Kentucky law, governs when the statute of limitations begins to run. *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997); *Dixon v. Anderson*, 928 F.2d 212, 215 (6th Cir. 1991). The courts look to what event should have alerted the typical lay person to protect his or her rights. *Dixon* at 215. For cases involving tenure decisions, this Court has held that the statute of limitations begins to run when the tenure decision was made, and the faculty member was notified, not when the employment actually terminated. *Delaware State College v. Ricks*, 449 U.S. 250, 259 (1980); *see also Chardon v. Fernandez*, 454 U.S. 6, 8 (1981). Furthermore, "the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations periods." *Ricks* at 261. It is not tolled if the plaintiff chooses to seek optional administrative remedies. *Id.*

Dr. Haeberle filed this lawsuit on December 21, 2000. In his Complaint, Dr. Haeberle does not state the exact date on which he received notice that he was to be terminated. However, his Complaint states that he received notice of the denial of tenure prior to filing his grievance. The Faculty Grievance Committee conducted a hearing on his grievance on September 7, 1999. Therefore, the one-year statute of limitations had run when he filed his Complaint in December 2000.

Dr. Haeberle argues that the statute of limitations did not begin to run until the grievance process was complete in March 2000. He claims the decision was not "final" until the Board of Trustees voted on his grievance, referring vaguely to "the integrated process." Dr. Haeberle mistakenly argues that he needed to exhaust his administrative remedies prior to filing his claims. He did not have to exhaust state administrative remedies before bringing a § 1983 claim. *See Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 502-503 (1982); *Lawrence v. Chancery Court of Tennessee*, 188 F.3d 687, 692 (6th Cir. 1999). The fact that Dr. Haeberle pursued his collateral administrative remedies—by filing a grievance that the Trustees ultimately rejected in March 2000—did not toll the statute of limitations.

Dr. Haeberle also claims that because the decision to terminate his employment was made by the President and not by the full Board of Trustees, it was not "final." Dr. Haeberle argues that the Board of Trustees must make the "final decision." Nothing in Kentucky law indicates that the Board of Trustees must act on any negative recommendation by the President. Under Kentucky law, with regard to faculty tenure appointments, "[e]ach board of regents for the universities may appoint a president, and on

the recommendation of the president may, in its discretion, appoint all faculty members and employees and fix their compensation and tenure of service." KRS 164.360. There was no affirmative appointment in this case, so the provision does not apply. The unequivocal notice from the President should have alerted Dr. Haeberle to protect his rights. Dr. Haeberle's Complaint clearly states that he was notified of the decision and the termination prior to the filing of his grievance. He was clearly seeking review of a non-tentative decision, regardless of whether it was called a recommendation or something else, when he filed his grievance, rather than trying to influence initial decision-making about whether he should receive tenure. The Courts below correctly found that the grievance process did not toll Dr. Haeberle's statute of limitations.

Furthermore, the alleged constitutional violations involved the decisions made by Dr. Shumaker, Dr. Garrison, and Dr. Kaplan, not the subsequent grievance process. The proper focus for statute of limitations purposes is on the alleged illegal act, "not the point at which the consequences of the act became painful." *Chardon*, 454 U.S. at 8. As indicated in Plaintiff's Complaint, he learned of the Respondents' decision prior to filing his grievance, which occurred more than one year before he filed suit. Those decisions constitute the alleged violations at issue.

With no basis, Dr. Haeberle claims that *Board of Trustees of the University of Kentucky v. Hayse*, 782 S.W.2d 609 (Ky. 1989) supports his position. However, *Hayse* is irrelevant to the case at hand. First, federal law, not Kentucky law, governs the issue. *Kuhnle Brothers, Inc. v. County of Geauga, supra*. At most, the case supports Respondents' position that the statute of limitations began to run when

Dr. Haeberle was notified of the denial of tenure. In *Hayse*, the statute of limitations began to run after the university President denied tenure. In *Hayse*, the Board of Trustees never considered the plaintiff's tenure application, contrary to Dr. Haeberle's assertions in his brief. *Id.* at 612.

The courts below correctly found that Dr. Haeberle failed to file suit within the one-year limitations period. This Court should not review that decision.

B. Dr. Haeberle's Complaints Could Have Been Dismissed on Grounds Other than the Statute of Limitations.

Even if the Sixth Circuit erroneously decided the statute of limitations issue, Dr. Haeberle's claims would have failed for various other reasons. Dr. Haeberle failed to state a claim for violations of 42 U.S.C. § 1985(3), because he did not allege any class-based discriminatory animus. *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825 (1983).

Further, each of Dr. Haeberle's constitutional claims against the state and the individuals acting in their official capacity fail. Dr. Haeberle's 42 U.S.C. § 1983 claims for monetary damages against the University and the individual Respondents in their official capacities fail as a matter of law because a state is not considered a "person" under § 1983 against whom Dr. Haeberle can recover monetary damages. *Lapides v. Board of Regents*, 535 U.S. 613 (2002); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989). Furthermore, Respondents are entitled to immunity under the Eleventh Amendment for such monetary claims. *Hutsell v. Sayre*, 5 F.3d 996, 998-99 (6th Cir. 1993), *cert.*

denied, 510 U.S. 1119 (1994). They are also entitled to sovereign immunity for the state constitutional claims under Kentucky's sovereign immunity doctrine. *See Clevinger v. Board of Educ. of Pike County*, 789 S.W.2d 5, 9, 11 (Ky. 1990); *Franklin County, Ky. v. Malone*, 957 S.W.2d 195, 202 (Ky. 1997) (overruled on other grounds, *Commonwealth v. Harris*, 59 S.W.3d 896 (Ky. 2001)).

The individual Respondents in their individual capacities are entitled to qualified immunity. *See Key v. Grayson*, 179 F.3d 996, 999-1000 (6th Cir. 1999). "The threshold inquiry in a qualified immunity analysis is whether a constitutional violation occurred at all." *Id.* Only if the Court finds that a constitutional violation has occurred, would the Court then examine whether the violation involved "clearly established constitutional rights of which a reasonable person would have known." *Id.*; *see also Salehpour v. University of Tennessee*, 159 F.3d 199, 208 (6th Cir. 1998). Qualified immunity is also a defense that can be invoked under Kentucky law. *Morris v. Oldham Co. Fiscal Court*, 201 F.3d 784, 794 (6th Cir. 2000) (citing *McCollum v. Garrett*, 880 S.W.2d 530, 534 (Ky. 1994)).

In this case, no constitutional violation occurred because Dr. Haeberle had no property right to tenure and suffered no deprivation of any property right. *See Bunger v. University of Oklahoma Bd. of Regents*, 95 F.3d 987 (10th Cir. 1996); *Colburn v. Trustees of Indiana University*, 973 F.2d 581, 589-90 (7th Cir. 1992); *Ashley v. University of Louisville*, 732 S.W.2d 866, 867-868 (Ky. App. 1986); *Board of Educ. Of Ashland v. Jayne*, 812 S.W.2d 129, 131-32 (Ky. 1991). Furthermore, Dr. Haeberle has failed to state a claim for equal protection and free association violations. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214 (1985); *Roberts v. United*

States Jaycees, 468 U.S. 609 (1984); *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Batra v. Board of Regents of University of Nebraska*, 79 F.3d 717, 721 (8th Cir. 1996); *Clark v. Whiting*, 607 F.2d 634 (4th Cir. 1979). Even if Dr. Haeberle somehow stated a claim for such constitutional violations, the alleged violations did not involve clearly established constitutional rights of which a reasonable person would have known.

Even if the Sixth Circuit erroneously applied the statute of limitations, Dr. Haeberle's claims would have been dismissed for the foregoing reasons. The decisions below were appropriate and this Court should not grant Dr. Haeberle's Petition.

C. The Courts Below Followed the Proper Standards for the Federal Rule of Civil Procedure 12(c).

The final issue is whether it was appropriate for the Courts below to grant a Motion for Judgment on the Pleadings. Dr. Haeberle argues that the Courts improperly made factual findings outside the pleadings. This is not true. As explained above, Dr. Haeberle's Complaint contained self-defeating facts. He was clearly notified of his impending termination more than one year before filing suit, according to his Complaint. The Courts below based their decisions on the allegations in the pleadings, and it was proper for them to do so. The Courts' rulings should not be disturbed.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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